



CatholicCare Supplementary Submission to Victorian State Government Inquiry:

Protecting Victoria's Vulnerable Children

CatholicCare made a written Submission to the Victorian State Government Inquiry, "Protecting Victoria's Vulnerable Children" in May 2011. In view of a matter that has come to our attention since then we seek to make this further submission

It relates to the Youth Justice System which we note is not specifically mentioned in the terms of reference for this inquiry. Victoria has a Youth Justice System that has some very admirable features, for example the "dual track" system is unique in Australia and allows judges the discretion to impose youth justice orders rather than adult corrections orders where appropriate to vulnerable young people between the ages of 18 and 21 years. Another excellent characteristic of the Victorian Youth Justice System is that historically it has lower rates of incarceration than other jurisdictions and is better able to manage through a broad range of sentencing options and reform young offenders in community and family settings.

However there are some groups that are over represented in the Youth Justice System and our observations suggest that young people who are in the state protection and care system are one such group. In fact a Department of Human Services snapshot survey taken in 2009 showed that of the 155 boys and 9 girls in custody in the Youth Justice System, 30% had current or previous involvement with Child protection. Given this high representation it is fair to conclude that matters relating to Youth Justice are highly relevant to an inquiry into protecting Victoria's vulnerable children.

The particular concern that CatholicCare has relates to a current proposal of the State Government to require judges to impose minimum sentences of two years in custody for children aged 16 and 17 convicted of offences of either intentionally or recklessly causing serious injury.

The notion of what is effectively mandatory sentencing is inconsistent with the current requirement for judges when imposing sentence on a young person to have regard to the following matters:

- (a) the need to strengthen and preserve the relationship between the child and the child's family; and
- (b) the desirability of allowing the child to live at home; and
- (c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and

(d) the need to minimise the stigma to the child resulting from a court determination; and

(e) the suitability of the sentence to the child; and

(f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and

(g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.

All these matters must be considered in sentencing and they are detailed in s362 of the Children, Youth and Families Act 2005.

In the view of CatholicCare the Act requires judges to consider all of these matters for good reason- consider for example that the 2009 DHS snapshot survey that I quoted from earlier also disclosed that of the children in Youth Justice custody, 26% presented with mental health issues, 27% with issues concerning their intellectual functioning and 24% had a history of self harm or suicide ideation- judges must have maximum discretion in sentencing young people with such complex backgrounds and needs.

The principal purpose of sentencing for children such as these has to be about their rehabilitation and proper formation. To impose a requirement for minimum sentences would disallow sentencing judges to take into account the very important considerations currently required by the Act and would considerably reduce the capacity of the court to sentence in the best interests of the child and his or her prospects for rehabilitation and development.

CatholicCare makes the following recommendations concerning the Youth Justice System and its capacity to protect Victoria's Vulnerable Children:

- we urge this Inquiry to recommend to the State Government that it rethink and abandon its intention to remove judicial discretion in the sentencing of children convicted of any offence.
- we recommend that in any review of the role of the Child Safety Commissioner, the Commissioner be given the role of monitoring the Youth Justice System
- we recommend that a community or independent visitors scheme such as exists in corrections, aged care, and in the mental health and disability care systems be introduced in the Youth Justice system.

This supplementary submission should be read in conjunction with CatholicCare's May 2011 Submission to the Victorian State Government Inquiry: Protecting Victoria's Vulnerable Children.

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Chief Executive Officer

7 July 2011